

Assembly Bill No. 2685

Passed the Assembly August 26, 2014

Chief Clerk of the Assembly

Passed the Senate August 25, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 13963 of the Government Code, to amend Section 1191.15 of the Penal Code, and to amend Sections 216 and 9202 of the Probate Code, relating to crime victims.

LEGISLATIVE COUNSEL'S DIGEST

AB 2685, Cooley. Crime Victim Compensation and Government Claims Board.

(1) Existing law provides for the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation and Government Claims Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law requires the board to be subrogated against the perpetrator of the crime to the rights of a recipient to the extent of any compensation granted. Existing law authorizes a court to allow a victim, or others related to the victim, as specified, to submit a statement to the court concerning the crime, the person responsible, and the need for restitution.

This bill would allow a representative of the board to provide the probation department, district attorney, and court with information relevant to the board's losses prior to the imposition of a sentence, as provided.

(2) Existing law requires that when a deceased person has an heir who is confined in a correctional facility, the estate attorney or other specified person give the director of the board notice of the decedent's death within 90 days of the death and include specified information about the incarcerated heir. Existing law requires the general personal representative or the estate attorney of a decedent's estate to provide notices of the decedent's death to the director of the board, no later than 90 days after the date letters of administration are first issued if the representative or attorney knows or has reason to believe that an heir is incarcerated in a prison, jail, or other specified state or local correctional facility.

This bill would expand these provisions to apply to a beneficiary, as well as an heir, who is confined or has been confined. This bill would also require a representative or attorney to give notice only

when he or she knows that an heir is incarcerated. This bill would make technical, nonsubstantive changes.

The people of the State of California do enact as follows:

SECTION 1. Section 13963 of the Government Code is amended to read:

13963. (a) The board shall be subrogated to the rights of the recipient to the extent of any compensation granted by the board. The subrogation rights shall be against the perpetrator of the crime or any person liable for the losses suffered as a direct result of the crime which was the basis for receipt of compensation, including an insurer held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) The board shall also be entitled to a lien on any judgment, award, or settlement in favor of or on behalf of the recipient for losses suffered as a direct result of the crime that was the basis for receipt of compensation in the amount of the compensation granted by the board. The board may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the recipient. If a claim is filed within one year of the date of recovery, the board shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the recipient responsible for recovery thereof from the perpetrator of the crime, provided that the total amount of the lien is recovered. The remaining 75 percent of the amount, and any amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) The board may compromise or settle and release any lien pursuant to this chapter if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the recipient. Repayment obligations to the Restitution Fund shall be enforceable as a summary judgment.

(d) No judgment, award, or settlement in any action or claim by a recipient, where the board has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the

complete terms of the award, settlement, or judgment, and the name and address of any insurer directly or indirectly providing for the satisfaction.

(e) (1) If the recipient brings an action or asserts a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this chapter, notice of the institution of legal proceedings, notice of all hearings, conferences, and proceedings, and notice of settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. Notice of the institution of legal proceedings shall be given to the board within 30 days of filing the action. All notices shall be given by the attorney employed to bring the action for damages or by the recipient if no attorney is employed.

(2) Notice shall include all of the following:

(A) Names of all parties to the claim or action.

(B) The address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney.

(C) The nature of the claim asserted or action brought.

(D) In the case of actions before courts or administrative agencies, the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number.

(3) When the recipient or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by an insurer, or is insured for the injury caused to the recipient, notice shall include a statement of that fact and the name and address of the insurer. Upon request of the board, a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within

45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10-percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code. The 10-percent rebates shall not be used to supplant county funding.

(g) In the event of judgment or award in a suit or claim against a third party or insurer, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the board, allow as a lien against the amount of the judgment or award, the amount of the compensation granted by the board to the recipient for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based.

(h) For purposes of this section, "recipient" means any person who has received compensation or will be provided compensation pursuant to this chapter, including the victim's guardian, conservator or other personal representative, estate, and survivors.

(i) In accordance with subparagraph (B) of paragraph (4) of subdivision (f) of Section 1202.4 of the Penal Code, a representative of the board may provide the probation department, district attorney, and court with information relevant to the board's losses prior to the imposition of a sentence.

SEC. 2. Section 1191.15 of the Penal Code is amended to read:

1191.15. (a) The court may permit the victim of any crime, his or her parent or guardian if the victim is a minor, or the next of kin of the victim if the victim has died, to file with the court a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium acceptable to the court, expressing his or her views concerning the crime, the

person responsible, and the need for restitution, in lieu of or in addition to the person personally appearing at the time of judgment and sentence. The court shall consider the statement filed with the court prior to imposing judgment and sentence.

Whenever an audio or video statement or statement stored on a CD Rom, DVD, or other medium is filed with the court, a written transcript of the statement shall also be provided by the person filing the statement, and shall be made available as a public record of the court after the judgment and sentence have been imposed.

(b) Whenever a written, audio, or video statement or statement stored on a CD Rom, DVD, or other medium is filed with the court, it shall remain sealed until the time set for imposition of judgment and sentence except that the court, the probation officer, and counsel for the parties may view and listen to the statement not more than two court days prior to the date set for imposition of judgment and sentence.

(c) No person may, and no court shall, permit any person to duplicate, copy, or reproduce by any audio or visual means any statement submitted to the court under the provisions of this section.

(d) Nothing in this section shall be construed to prohibit the prosecutor from representing to the court the views of the victim, his or her parent or guardian, the next of kin, or the California Victim Compensation and Government Claims Board.

(e) In the event the court permits an audio or video statement or statement stored on a CD Rom, DVD, or other medium to be filed, the court shall not be responsible for providing any equipment or resources needed to assist the victim in preparing the statement.

SEC. 3. Section 216 of the Probate Code is amended to read:

216. (a) For the purposes of this section “confined” means to be confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation, or its Division of Juvenile Facilities, or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.

(b) The estate attorney, or if there is no estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent shall give the Director of the California Victim Compensation and Government Claims Board notice of a decedent’s death not later than 90 days after the date of death in either of the following circumstances:

(1) The deceased person has an heir or beneficiary who is confined.

(2) The estate attorney, or if there is no estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent, knows that an heir or beneficiary has previously been confined.

(c) The notice shall be given as provided in Section 1215 and shall include all of the following:

(1) The name, date of birth, and location of incarceration, or current address if no longer incarcerated, of the decedent's heir or beneficiary.

(2) The heir's or beneficiary's CDCR number if incarcerated in a Department of Corrections and Rehabilitation facility or booking number if incarcerated in a county facility.

(3) A copy of the decedent's death certificate.

(4) The probate case number, and the name of the superior court hearing the case.

(d) Nothing in this section shall be interpreted as requiring the estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent to conduct an additional investigation to determine whether a decedent has an heir or beneficiary who has been confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation, or its Division of Juvenile Facilities, or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.

SEC. 4. Section 9202 of the Probate Code is amended to read:

9202. (a) Not later than 90 days after the date letters are first issued to a general personal representative, the general personal representative or estate attorney shall give the Director of Health Care Services notice of the decedent's death in the manner provided in Section 215 if the general personal representative knows or has reason to believe that the decedent received health care under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or was the surviving spouse of a person who received that health care. The director has four months after notice is given in which to file a claim.

(b) Not later than 90 days after the date letters are first issued to a general personal representative, the general personal

representative or estate attorney shall give the Director of the California Victim Compensation and Government Claims Board notice of the decedent's death in the manner provided in Section 216 if the general personal representative or estate attorney knows that an heir or beneficiary is or has previously been confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation or confined in any county or city jail, road camp, industrial farm, or other local correctional facility. The director of the board shall have four months after that notice is received in which to pursue collection of any outstanding restitution fines or orders.

(c) (1) Not later than 90 days after the date letters are first issued to a general personal representative, the general personal representative or estate attorney shall give the Franchise Tax Board notice of the administration of the estate. The notice shall be given as provided in Section 1215.

(2) The provisions of this subdivision shall apply to estates for which letters are first issued on or after July 1, 2008.

(d) Nothing in this section shall be interpreted as requiring the estate attorney, the beneficiary, the personal representative, or the person in possession of property of the decedent to conduct an additional investigation to determine whether a decedent has an heir or beneficiary who has been confined in a prison or facility under the jurisdiction of the Department of Corrections and Rehabilitation, or its Division of Juvenile Facilities, or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.

Approved _____, 2014

Governor